

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of new rules)
I through XIX pertaining to regional)
correctional facilities)

NOTICE OF ADOPTION

TO: All Concerned Persons

1. On November 22, 2006 the Department of Administration published MAR Notice No. 20-7-35 regarding the proposed adoption of new rules I through XIX at page 2872 of the 2006 Montana Administrative Register, Issue No. 22.

2. The department has adopted new rules I (20.28.101), II (20.28.104), III (20.28.107), IV (20.28.110), V (20.28.113), VI (20.28.116), VII (20.28.119), VIII (20.28.122), X (20.28.128), XI (20.28.131), XII (20.28.134), XIII (20.28.137), XIV (20.28.140), XVI (20.28.146), XVII (20.28.149), XVIII (20.28.152) and XIX (20.28.155) as proposed.

3. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE IX (20.28.125) COMPLETING THE PER DIEM WORKSHEET DATA SUMMARY (1) remains as proposed.

(2) Section II-Financial ~~Date~~ Data Summary: on Line A enter the most recently concluded fiscal year that corresponds to the accounting period of the cost submission.

(a) through (6) remain as proposed.

AUTH: 53-30-507, MCA

IMP: 53-30-507, MCA

NEW RULE XV (20.28.143) COMPLETING SCHEDULE F-EQUIPMENT COST (1) through (5)(a) remain as proposed.

(b) the cost of equipment received from the state government through the state surplus property program or similar programs or purchased with funds received from the state government specifically for the purchase of the identified piece of equipment;

(5)(c) through (5)(g) remain as proposed.

AUTH: 53-30-507, MCA

IMP: 53-30-507, MCA

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

Comment #1: The department received two written comments and one person who did not submit written comments testified at the public hearing. Dawson County Regional Prison Warden Steve Ray submitted written comments that indicated Dawson County is well pleased with the process the department used to promulgate the rules. He said, "the process was fair" and "a method of determining per diem that was fair to our county has been reached." Missoula County Sheriff Mike McMeekin in oral testimony at the public hearing echoed Dawson County's sentiment that Missoula County considered the process fair and that Missoula County is pleased with the rules.

Response #1: The department acknowledges the comments.

Comment #2: Cascade County Commissioners submitted comments regarding New Rule I, DEFINITIONS, "Chart of Accounts". Cascade County requests the department remove "chart of accounts" from the definitions due to a general concern of being required to adopt a specific form.

Response #2: The definition does not mandate any particular chart of accounts and is broad enough to encompass any chart of accounts that the county chooses to use. The department, therefore, declines to remove "chart of accounts" from the definitions.

Comment #3: Cascade County Commissioners submitted comments regarding New Rule I, DEFINITIONS, "Operating Cost". The definition states that operating cost means "expenditures excluding personal services that relate to the operation of the facility and directly benefit state inmates." Cascade County Commissioners commented that it "could have an indirect benefit to a State inmate. Directly benefiting leaves major room for interpretation."

Response #3: The department disagrees that there is room for interpretation of what directly benefits state inmates.

Comment #4: Cascade County Commissioners submitted comments regarding New Rule I, DEFINITIONS, "Per Diem Worksheet." Cascade County commented that all three existing regional prisons agreed to use the form from the U.S. Marshals Service as a model, and that the three regional prisons did not agree on the changes the department made to the form without specific objection to the form or suggested changes.

Response #4: The department acknowledges the comment.

Comment #5: Cascade County Commissioners submitted comments regarding New Rule IV, "CONSTRUCTION REQUIREMENTS FOR A REGIONAL

CORRECTIONAL FACILITY.” Cascade County asked, “Does the State maintain accreditation by both the ACA and the NCCHC? If not, how can you hold someone else to those standards?”

Response #5: Part (6) of New Rule IV states that the rule “applies only to facilities constructed after the effective date of these rules.” Therefore, Cascade County’s current facility is not impacted by the accreditation requirement. The department believes the rule is necessary because Montana private prisons are held to this standard and the standard should also apply to regional correctional facilities.

Comment #6: Cascade County Commissioners submitted five comments regarding New Rule VII, “CALCULATION OF A PER DIEM RATE-GENERAL PRINCIPLES.” The first comment about NEW RULE VII asks, “If the per diem rate is based on historical numbers how can it reflect actual costs?”

Response #6: The per diem rate is calculated based on the actual costs the facility incurred during the previous fiscal year and is then adjusted for any expected contingencies during the upcoming year. The rate is not based on “historical numbers,” but actual costs in the previous fiscal year.

Comment #7: Cascade County Commissioners next commented regarding New Rule VII, “The State needs to share in costs that a jail would have rather [sic] or not the regional is there.”

Response #7: The department disagrees with this comment. The intent of the legislation that mandated these rules and the intent of the rest of these rules are well reflected in this rule: that the State pays the county only the actual cost the county incurred to operate the regional prison. No other comments were received.

Comment #8: Cascade County Commissioners next commented regarding New Rule VII, “What is the required format, and does DOC understand that any costs getting the information into the format will be done so as a regional prison direct cost?”

Response #8: The required format is any format in which the department can differentiate between general costs and the specific costs that must be reported on the Per Diem Calculation Worksheet. The department understands that if Cascade County incurs a cost for something that the county does not use with anything except the regional prison that it is a direct cost to the regional prison.

Comment #9: Cascade County commented, “Why require a CAFR? MCA requires us to have an audit performed. A CAFR is more detailed in areas that would not benefit DOC in evaluating our financial condition.” Audited financial statements and CAFRs report financial information the same. CAFR historically has cost more to create and audit, therefore, being required will be a direct cost of the regional prison.

Response #9: Cascade County's comment seems to suggest that the County does not do a CAFR, yet the county's CAFR is on the county's website. The rule requires the information and documents provided for the per diem calculation to tie back to the county's CAFR. The rule does not require the county to incur any additional expense.

Comment #10: Cascade County Commissioners commented regarding New Rule VII(4) that the section "can create a Catch 22." The Commissioners further elaborated about a potential conflict with the department about how to come into compliance with department mandates.

Response #10: The department disagrees with the comment. The department does not believe the rule creates a potential conflict.

Comment #11: Cascade County Commissioners commented about New Rule VIII, GENERAL COST PRINCIPLES USED FOR CALCULATING PER DIEM, specifically (3), "who determines if it benefits state inmates?"

Response #11: As stated in Response #3 above, the department does not believe there is any room for interpretation about whether something benefits state inmates, but if there is a question, the regional correctional facility and department will discuss and hopefully mutually agree whether it benefits state inmates. These rules contain a dispute resolution provision, and if the parties cannot agree, either of the parties may utilize the dispute resolution procedure.

Comment #12: Cascade County Commissioners had three comments about New Rule IX, COMPLETING THE PER DIEM WORKSHEET DATA SUMMARY. First, the Commissioners asked if Rule IX(2) was correct when it stated "Financial Date."

Response #12: The department has amended proposed New Rule IX accordingly to reflect the correct word.

Comment #13: Cascade County asks "Do you want the total costs of running our detention center of just the Regional Prison?"

Response #13: The form is self-explanatory and requests numbers of inmates, not costs. The first part asks for the "inmate capacity of regional correctional facility" and further requests numbers of inmate capacity for federal, state and local inmates for the time period in question. The second part asks for number of actual inmate days in the different categories, and the third part asks for average daily population of the three inmate categories, federal, state and local.

Comment #14: Cascade County Commissioners commented about New Rule IX (4), "Why do you need to know what our federal per diem rate is?"

Response #14: The country's federal per diem rate is public information. The department seeks the information as a system of checks and balances because the

federal per diem rate should be based on much of the same information as the regional prison calculation.

Comment #15: Cascade County Commissioners had two comments about New Rule XIII, COMPLETING SCHEDULE D-OTHER DIRECT OPERATING COSTS. First, the Commissioners commented that “Certain of the other direct costs we are required to supply more than we are required to supply on the jail side. The bed ratio would under pay, and I am not sure it would be cost effective to do actual cost. Examples are linens, and toiletries.”

Response #15: For most of the items in New Rule XIII (1)(a) through (s) the department, after consultation with the existing regional prisons, allows the facility a choice about how to calculate the expense. In the example given, it was Cascade County that requested it be allowed to report the actual cost of such items. The department and the other two regional prisons believe the bed ratio accurately reflects these costs, but if the county wants to keep track of and report its actual cost, it can do that as an alternative.

Comment #16: Cascade County Commissioners commented about New Rule XIII (1)(r) that, “interest being earned on debt service reserves would be earned on monies paid by the Counties [sic] taxpayers. The interest charged on the per diem rate would be its portion for the year of the amount owed. Therefore, it would be paid out to the bonding agent when earned and not held to make interest. This would be the same if we debt financed other items in the prison.”

Response #16: The concept underlying rule XIII (1)(r), like the concept which underlies the rest of the per diem calculation rules is that the county must submit its actual costs. If the county pays interest as an actual expense for the regional prison, then it can submit that interest in the calculation. Similarly, if the county earns money on the reserves before it pays it out as interest, the amount of money it earns must be deducted from the interest it pays. This is the only way it will reflect the actual cost to the county.

Comment #17: Cascade County Commissioners commented about New Rule XIV, COMPLETING SCHEDULE E-COST ALLOCATION PLANS/INDIRECT COST PROPOSALS. Cascade County contends in this comment that it is too much work to calculate and submit an indirect cost proposal, but rejects the alternative 8% of direct operating costs as too low.

Response #17: The indirect cost rate of 8% is the rate the regional prisons negotiated with the department. The regional prisons have a choice with this rule. The prison may calculate an indirect cost proposal, or if, as Cascade County states, that entails too much work, the allowable rate for indirect costs is 8%.

Comment #18: Cascade County Commissioners commented about New Rule XV, COMPLETING SCHEDULE F-EQUIPMENT COST. The commissioners wanted

clarification about section (5)(b). Section (5)(b) states that the regional facility may not submit as a cost, the cost of items purchased with funds received from the state government. The county states, "All costs of the regional prison are paid for by state funds. Therefore, the way this section currently reads that we could not recuperate costs on any replacement items."

Response #18: The rule intends to prohibit write-off of any item for which the state specifically gives the county the money to purchase. The department has amended proposed New Rule XV accordingly.

Comment #19: Cascade County Commissioners commented about New Rule XVI, COMPLETING SCHEDULE G-BUILDING DEPRECIATION. The comment has to do with the fact the rule prohibits the county from claiming depreciation on the amount of the construction cost that the State contributed in the form of grants. The comment reads, "Did any of the contribution that the State made towards construction of the facility require match? If so did the State provide such match? If not was the County informed at time of construction of the match requirement? If not how can you make us responsible now?"

Response #19: The intent of this rule is to accurately reflect the actual cost to the governing body of running the state portion of the regional facility. If the governing body received grant money from the State, then the governing body does not incur a depreciation expense on that part of the building the money purchased. Whether or not the State required matching funds from the governing body does not change the expense the governing body incurs. The rule does not make the governing body "responsible" for anything.

Comment #20: Cascade County Commissioners commented about New Rule XVII, REVIEW AND REVISION OF PER DIEM RATE. The county commented, "Should section 5 read date to interested persons or data to interested persons?"

Response #20: "Data" is the correct term.

/s/ Mike Ferriter
MIKE FERRITER
Director of Corrections

/s/ Colleen A. White
COLLEEN A WHITE
Rule Reviewer

Certified to the Secretary of State January 2, 2007.